IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.11584 of 2004

Dated: August 1, 2007

Between:

A. Chinna Anjaiah, S/o. Balaiah, aged about 62 years, Occ: Business, R/o.5-120, NH-7, Nandigam Village, Kothur Mandal, Mahabbobnagar District.

… Petitioner

And

The Prohibition & Excise Superintendent, Mahaboobnagar District, and another.

… Respondents

Order:

Petitioner seeks a Writ of Mandamus to declare the proceedings dated 12-03-2004 issued by the first respondent in Rc.No.A2/559/2003 and consequential proceedings of the second respondent dated 15-06-2004, issued in Rc.No.A2/559/2003, as arbitrary, illegal and violative of principles of natural justice and that respondents are not

entitled to collect differential license fee of Rs.4,45,000/- from him.

2. Heard Mr. Govind, learned counsel for the petitioner, and learned Government Pleader for Prohibition and Excise appearing on behalf of the respondents.

3. Petitioner was granted license in Form-IL 24 to sell Indian and Foreign Liquor in retail, during the excise year 1998-99, in the name and style of M/s. Tirumala Wines in Nandigama village in Mahaboobnagar District. As per the Census of 1991, the population of Nandigama village was 3,000 and based on the same, license was issued to the petitioner in the population slab of below 10,000. Thereafter, the license was renewed for the excise years 1999-00, 2000-01, 2001-02 and 2002-03 and for those years also, license fee was collected in the population slab of below 10,000, as per the Census of 1991. Now, on the ground that as per the 2001 Census, the population of Nandigama village was shown as 12,691, and on the ground that license fee collected earlier was not in the proper slab, respondents have initiated proceedings to recover the differential license fee of Rs.1.45 lakhs for 2001-02, Rs.1.50 lakhs for 2002-03, and Rs.1.50 lakhs for 2003-04, totaling Rs.4.45 lakhs.
Proceedings dated 12-03-2004, which is termed as show cause notice, has been issued by the first respondent – Prohibition and Excise Superintendent, Mahaboobnagar directing the petitioner to pay the amount of Rs.4.45 lakhs towards short collection of license fee within two days therefrom.

4. The case of the petitioner is that in response to the information sought by the first respondent, vide his letter dated 18-07-2003, the Mandal Revenue Officer, Kothur has furnished information by letter dated 12-08-2003, as per which the population of Nandigama village

as per 2001 Census is only 7340. It is stated that as the population of the said village is less than 10,000 as per the 2001 Census, respondents are not entitled to make demand on account of differential license fee.

5. Learned counsel for the petitioner submits that though the proceedings dated 12-03-2004 has been termed as show cause notice, however, without giving any opportunity to the petitioner, an amount of Rs.4.45 lakhs was directed to be paid in the very proceedings itself. In this connection, it is alleged that the impugned proceedings is in violation of principles of natural justice.

6. Respondents have filed counter affidavit stating that as per the Census figures of 2001, the population of Nandigama village is 12,691 and the petitioner has given an undertaking for the excise year 2002-03 to the effect that he is ready to pay the differential license fee if warranted due to the increase of population level of the place of license, without any objection; as proper license fee was not paid by the petitioner, show cause notice dated 12-03-2004 was issued to him directing him to pay an amount of Rs.4.45 lakhs.

7. Learned Government Pleader for Prohibition and Excise appearing for the respondents submits that as much as Census figures show that the population of Nandigama village is more than 10,000, and in view of the undertaking given by the petitioner, he is liable to pay the differential license fee.

8. In this case, at the outset, it is to be seen that license was granted to the petitioner at first instance during the year 1998-99 and license fee was collected in the population slab basing on the Census of 1991. Even for further years, license was renewed upto 2002-03 by

collecting license fee based on the Census of 1991 on the ground that the population of Nandigama village was below 10,000. It is evident from the subject cited in the proceedings dated 12-03-2004 that the said proceedings is in the form of a show cause notice. When differential license fee had to be collected on the ground that it was not collected for the excise year 2001-02 onwards, respondents had rightly issued a show cause notice, however, while issuing show cause notice respondents ought not to have demanded the petitioner to pay the differential license fee straightaway. When the impugned proceedings is termed as a show cause notice, the question of liability should have been considered only after the petitioner filed his explanation but not in the show cause notice itself. A copy of the letter sent by the Mandal Revenue Officer, Kothur in response to the letter of the first respondent has been filed. A perusal of the said letter would indicate that the Mandal Revenue Officer reported that as per the Census of 2001, the population of Nandigama village is 7340 only. Though counter affidavit has been filed, relevant extract of the Census of 2001 has not been made available. The case of the petitioner is that as per the Census of 2001, the population of Nandigama village is less than 10,000.

9. During the pendency of the writ petition, this court, by order dated 08-07-2004, stayed the operation of the impugned proceedings and further by order dated 23-08-2004 made the stay absolute on condition of the petitioner depositing half of the amount demanded under the impugned proceedings within four weeks therefrom. Learned counsel for the petitioner submits that as per the directions of this court, half of the amount demanded, has been deposited by the petitioner.

10. As much as the proceedings dated 12-03-2004, by which the

petitioner was directed to pay the differential license fee, is termed as a show cause notice and it is not in dispute that the said proceedings is not preceded by any prior notice or opportunity to the petitioner,

I deem it appropriate to dispose of the writ petition permitting the petitioner to file his objections to the said proceedings within a period of four weeks from the date of receipt of this order. On such objections being filed, the first respondent – Prohibition and Excise Superintendent, Mahaboobnagar, treating the proceedings dated 12-03-2004 as a show cause notice, shall consider the objections filed by the petitioner and pass appropriate orders. Half of the amount deposited by the petitioner pursuant to the interim order of this court shall be subject to the outcome of the final orders to be passed by the first respondent. Till appropriate final orders are passed, no further steps shall be taken to recover the balance amount from the petitioner.

It is clarified that if no objections are filed by the petitioner within the time stipulated above, it is open for the respondents to pass appropriate orders and communicate the same to the petitioner.

11. The writ petition is accordingly disposed of. No order as to costs.

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JUSTICE R. SUBHASH REDDY.

August 1, 2007
MRR